

**SECTION BY SECTION DESCRIPTION OF PROPOSED LEGISLATION FOR
IMPLEMENTING THE STOCKHOLM CONVENTION ON PERSISTENT
ORGANIC POLLUTANTS, THE PROTOCOL TO THE 1979
CONVENTION ON LONG-RANGE TRANSBOUNDARY AIR POLLUTION
ON PERSISTENT ORGANIC POLLUTANTS, AND THE
ROTTERDAM CONVENTION ON THE PRIOR INFORMED CONSENT
PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND
PESTICIDES IN INTERNATIONAL TRADE**

Outlined below is a section by section description of the proposed legislation for implementing (1) the Stockholm Convention on Persistent Organic Pollutants (POPs Convention), (2) the Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants (LRTAP POPs Protocol), and (3) the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC Convention). Part I describes the proposed legislative changes to FIFRA; Part II describes the proposed legislative changes to TSCA.

The test of the legislation indicates amendments to FIFRA and TSCA in redline and strikeout text.

Part I – FIFRA

Section 1(a): Definitions

This section of the legislation defines certain key terms and abbreviations that are used throughout the legislation. For example, the term “POPs Convention” is defined to mean “the Stockholm Convention on Persistent Organic Pollutants to which the United States is a Party.” Likewise, the term “LRTAP POPs Protocol” is defined to mean “the Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants to which the United States is a Party.” And the term PIC Convention is defined to mean “the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade to which the United States is a Party.” The section also includes definitions of “POPs Pesticide” and “LRTAP POPs Pesticide” as pesticides listed on Annexes A or B of the POPs Convention or Annexes I or II of the LRTAP POPs Protocol for which any applicable provision of the respective treaty has entered into force for the United States.

associated with the use of the pesticide; or (2) is necessary to avoid a significant disruption in domestic production of an adequate, wholesome, and economical food supply.”

Section 1(b): Registration of pesticides

This section implements Article 3, paragraph 2(a)(ii) of the POPs Convention by prohibiting transfer of nonexempt imports of POPs Pesticides from a registered establishment outside of the United States to a registered establishment inside in the United States.

Section 1(c): Unlawful acts

This section makes it unlawful for any person to violate section 17 of FIFRA or any regulation promulgated thereunder. FIFRA section 17 is the section that would contain the bulk of the provisions related to implementing the POPs Convention, the LRTAP POPs Protocol, and the PIC Convention.

Section 1(d): Imports, exports, and international conventions

This section would add the phrase “and international conventions” to the title of FIFRA section 17 so that it would read in full “Section 17. imports, exports, and international conventions.”

Section 1(e): Pesticides and devices intended for export

This section is necessary to implement the export provisions in Article 3, paragraph 2 (b) of the POPs Convention and Articles 11, 12 and 13 of the PIC Convention. It would prohibit exports that do not comply with the export provisions of section 17, including, for example, the new POPs-related export provisions and the PIC-related export controls.

Section 1(f): Importation of pesticides and devices

This section implements Article 3 paragraph 2(a) of the POPs Convention in that it ensures that FIFRA section 17(c) could not be interpreted as allowing POPs Pesticide imports in violation of the POPs Convention.

Section 1(g): International conventions and cooperation in international efforts

This section implements Article 3, Article 6, Article 8, Article 12, Annexes A and B, and other related provisions of the POPs Convention. It also implements Article 3, Article 4, Annexes I and II, and other related provisions of the LRTAP POPs Protocol. Finally, it implements Articles 5, 10, 11, 12 and 13 of the PIC Convention. This section of the proposed legislation is divided into several different sections. First, there is a section that provides that the Administrator “should pursue opportunities to participate in technical cooperation and capacity building activities designed to support implementation of the POPs Convention, the LRTAP POPs Protocol, and the PIC Convention. There is a section that contains provisions related to implementing the POPs Convention, and a separate section related to implementing the LRTAP POPs Protocol. These sections mirror each other and will be described jointly. There also is a section that harmonizes the POPs/LRTAP sections when a pesticide is covered by both the POPs Convention and the LRTAP POPs Protocol and a section that contains notice and record provisions. Finally, there is a section that contains provisions related to implementing the export notice, control and labeling provisions of the PIC Convention. This section also includes a provision for harmonizing the PIC and POPs export-related provisions.

POPs/LRTAP Sections

With certain exemptions, these sections would prohibit the sale, distribution, production, use, and for POPs pesticides, any disposal operation that may lead to recovery, recycling, reclamation, reuse, or alternatives uses of the 9 pesticides currently covered by the POPs Convention and the 3 additional pesticides covered by the LRTAP POPs Protocol. The exemptions to the prohibitions are tied to the exemptions allowed under the respective treaties, and include, among others, exemptions for quantities of a pesticide used for laboratory research or as a reference standard, quantities of a pesticide occurring as unintentional trace contaminants, quantities of a pesticide occurring as constituents of articles that were manufactured or in use as of the date of entry into force of the treaties. In addition, for POPs pesticides, there are exemptions that allow export and import consistent with the terms of the Convention. (The LRTAP POPs Protocol does not restrict import or export of listed pesticides, nor does the implementing legislation.)

For enforcement purposes, the section also contains provision that require POPs/LRTAP Pesticides to be accompanied by a certification statement when sold or distributed. The certification statement must include, among other things, the amount and identity of the pesticide, the basis for application of the enumerated provisions. The person who prepares the certification statement must maintain it for 3 years from the date that it is prepared. In addition, this section provides the Administrator with authority to promulgate such rules as necessary to ensure compliance with and facilitate implementation of the POPs Convention/LRTAP POPs Protocol and ensure against requirements that multiple certifications accompany the same pesticide.

These sections contain information provisions that allow interested persons to submit information to the Administrator regarding a pesticide that is proposed for listing either on the POPs Convention or the LRTAP POPs Protocol. For POPs, a decision of the Persistent Organic Review Committee (POPRC) that a proposal for listing fulfills Annex D screening criteria triggers authority for EPA to publish a request for information in the Federal Register. In response, within 60 days of the Federal Register publication, or within 60 days of the interested person acquiring new information, the person may submit to EPA any arguments or information associated with the risks or the benefits of the use of the pesticide proposed for listing that support a determination that the POPRC determination is correct or incorrect or that some or all uses of the pesticide in the United States cause or do not cause unreasonable adverse effects on the environment.

For POPs, the section also includes a second trigger. A decision by the POPRC that, on the basis of a risk profile, a pesticide shall move forward in the listing process triggers authority for EPA to publish a request for additional information. In response to this second federal register publication, interested persons may submit information, consistent with the information needs in Annex F, relevant to the risk management evaluation in Article 8.7, a decision by the COP in Article 8.9, or a determination that some or all of the uses of the pesticide do or do not cause unreasonable adverse effects on the environment.

The related LRTAP provisions contain authority for EPA to publish a request for information

upon submission of a risk profile to the Executive Body of the LRTAP POPs Protocol in support of an amendment to list a pesticide on one of the LRTAP Annexes. As in the POPs provisions, within specified time periods, interested persons may submit information related to the risks or benefits of use of the pesticide and arguments as to whether the risk profile is correct or incorrect and as to whether uses of the pesticide in the United States cause unreasonable adverse effects on the environment.

These sections require EPA to submit to the Secretary of State, within a specified time period, a report that contains information on registered uses in the United States of the pesticide and an assessment of the risks and benefits associated with the uses.

Both the LRTAP and POPs provisions also contain provisions that prohibit persons from using information in a subsequent cancellation proceeding that they could have, but did not, submit to the Agency in relation to these information collection provisions.

Harmonization Section

This section harmonizes the parallel POPs and LRTAP provisions for pesticides that are covered by both the POPs Convention and the LRTAP POPs protocol. The section provides that in case of conflict between the POPs and LRTAP provisions for a dually listed pesticide, the more stringent provision shall govern. In any case, however, the provisions shall be interpreted in a manner such that the United States is in compliance with both the POPs Convention and the LRTAP POPs Protocol.

Notice and Record Section

This section requires EPA, in cooperation with the Secretary of State, to publish in the Federal Register timely notice regarding, among other things, the POPs/LRTAP pesticides subject to the prohibitions in the legislation, any exemptions from the prohibitions, including any disallowances for any exemptions.

PIC Convention

This section implements Articles 5, 11, 12, and 13 of the PIC Convention. It implements Article 5 of the PIC Convention by requiring the Administrator, with concurrence from the Secretary of State, to identify banned and severely restricted pesticides. This provision also requires the Administrator to notify the Secretariat and the public of such determinations.

It implements Article 11 by requiring persons engaged in the export of pesticides that are listed on Annex III of the PIC Convention to comply with the decisions of the importing foreign state. Such decisions are notified to the USG through the PIC Convention Secretariat pursuant to Article 10. In addition, it implements Article 11 by requiring the Administrator, with the concurrence of the Secretary of State, to identify those chemicals that are added to Annex III of the PIC Convention and to identify the specific import foreign state responses banning or

restricting import of the pesticide. This notification will serve as notice to exporters of the pesticide.

It implements Article 12 of the PIC Convention by requiring exporters to notify EPA of the intended export of a pesticide that is banned or severely restricted in the US. This provision specifies that the notifications must include information required by Annex V of the PIC Convention. It then requires EPA to notify importing foreign states of the intended export of a pesticide that is banned or severely restricted. This notification is to include the information provided in the exporter's notification to the Administrator.

This section implements Article 13 of the PIC Convention by requiring exporters to include labeling information on significant risks and/or hazards to human health or the environment along with any relevant safety data sheets on the pesticide.

This section preserves the authority of the Administrator to exempt pesticides from the notification/export control requirements consistent with the PIC Convention.

Finally, this section harmonizes the provisions in this bill related to implementing the PIC Convention with the provisions in it related to implementing the POPs Convention to ensure that the U.S. remains in compliance with both Conventions.

PART II — TSCA

Section (a): Definitions

This section of the legislation defines certain key terms and abbreviations that are used throughout the legislation. For example, the term "POPs Convention" is defined to mean "the Stockholm Convention on Persistent Organic Pollutants to which the United States is a Party." Likewise, the term "LRTAP POPs Protocol" is defined to mean "the Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants to which the United States is a Party." And the term PIC Convention is defined to mean "the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade to which the United States is a Party." The section also includes definitions of "POPs Chemical Substance or Mixture" and "LRTAP POPs Chemical Substance or Mixture" as chemical substances or mixtures listed on Annexes A or B of the POPs Convention or Annexes I or II of the LRTAP POPs Protocol for which any applicable provision of the respective treaty has entered into force for the United States.

Section 2(b): Regulation of hazardous chemical substances and mixtures

This section implements Article 3, Article 6, Article 8, Annexes A and B, and other related provisions of the POPs Convention. It also implements Article 3, Article 4, Annexes I and II, and other related provisions of the LRTAP POPs Protocol. This section of the proposed

legislation is divided into several different sections. There is a section that contains provisions related to implementing the POPs Convention, and a separate section related to implementing the LRTAP POPs Protocol. These sections mirror each other and will be described jointly. There also is a section that harmonizes the POPs/LRTAP sections when a chemical substance or mixture is covered by both the POPs Convention and the LRTAP POPs Protocol. Finally, there is a section that contains notice and record provisions.

POPs/LRTAP Sections

With certain exemptions, these sections would prohibit the manufacture, processing, distribution in commerce, use, and disposal of the chemical substances or mixture currently covered by the POPs Convention and the LRTAP POPs Protocol. The exemptions to the prohibitions are tied to the exemptions allowed under the respective treaties, and include, among others, exemptions for quantities of a chemical substance or mixture used for laboratory research or as a reference standard, quantities of a chemical substance or mixture occurring as unintentional trace contaminants in products and articles, quantities of a chemical substance or mixture occurring as constituents of articles that were manufactured or in use as of the date of entry into force of the treaties. In addition, for POPs chemicals substances and mixtures, there are exemptions that allow export and import consistent with the terms of the Convention. (The LRTAP POPs Protocol does not restrict import or export of listed chemical substance or mixtures, nor does the implementing legislation.)

For enforcement purposes, the section also contains provisions that require POPs/LRTAP chemical substances or mixtures to be accompanied by a certification statement when distributed in commerce. The certification statement must include, among other things, the amount and identity of the chemical substance or mixture and the basis for application of the enumerated provisions. The person who prepares the certification statement must maintain it for 3 years from the date that it is prepared. In addition, this section provides the Administrator with authority to promulgate such rules as necessary to ensure compliance with and facilitate implementation of the POPs Convention/LRTAP POPs Protocol and ensure against requirements that multiple certifications accompany the same chemical substance or mixture.

Harmonization Section

This section harmonizes the parallel POPs and LRTAP provisions for chemical substances or mixtures that are covered by both the POPs Convention and the LRTAP POPs protocol. The section provides that in case of conflict between the POPs and LRTAP provisions for a dually listed chemical substance or mixture, the more stringent provision shall govern. In any case, however, the provisions shall be interpreted in a manner such that the United States is in compliance with both the POPs Convention and the LRTAP POPs Protocol.

Notice and Record Section

This section requires EPA, in cooperation with the Secretary of State, to publish in the Federal

Register timely notice regarding, among other things, the POPs/LRTAP chemical substances or mixtures subject to the prohibitions in the legislation, any exemptions from the prohibitions, including any disallowances for any exemptions.

Section 2(c): Reporting and retention of information

These sections contain information provisions that require or allow interested persons to submit information to the Administrator regarding a chemical substance or mixture that is proposed for listing either on the POPs Convention or the LRTAP POPs Protocol. For POPs, a decision of the Persistent Organic Review Committee (POPRC) that a proposal for listing fulfills Annex D screening criteria triggers authority for EPA to publish a request for information in the Federal Register. In response, within 60 days of the Federal Register publication, or with in 60 days of the interested person acquiring new information, certain interested person must and other interested persons may submit the following existing information, known or reasonably ascertainable by the person, to EPA: (A) annual quantity manufactured and at which locations; (B) uses; (C) annual quantity entering each environmental medium; and (D) other information consistent with the information specified in Annex D, paragraph 1, and Annex E paragraphs (b) through (e), of the POPs Convention. In addition, during the same time period, interested persons may also submit any arguments or information associated with the risks or benefits of the use of the chemical substance or mixture that support a determination either that the determination by the POPRC is or is not correct or that the chemical substance or mixture does or does not present an unreasonable risk of injury to health or the environment.

For POPs, the section also includes a second trigger. A decision by the POPRC that, on the basis of a risk profile, a chemical substance or mixture shall move forward in the listing process triggers authority for EPA to publish in the Federal Register a second request for information. In response to this second federal register publication, certain interested persons must and others may submit information, consistent with the information needs in Annex F, relevant to the risk management evaluation in Article 8.7, a decision by the Conference of the Parties (COP) in Article 8.9, or a determination that some or all of the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance or mixture does or does not present an unreasonable risk of injury to health or the environment.

The related LRTAP provisions contain authority for EPA to publish a request for information upon submission of a risk profile to the Executive Body of the LRTAP POPs Protocol in support of an amendment to list a chemical substance or mixture on one of the LRTAP Annexes. As in the POPs provisions, with in specified time periods, certain interested persons must and others may submit the following existing information, known or reasonably ascertainable, to EPA on the chemical substance or mixture: (A) potential for long-range transboundary atmospheric transport; (B) toxicity; (C) persistence, including biotic degradation processes and rates and degradation products; (D) bioaccumulation, including bioavailability; (E) annual quantity manufactured and at which locations; (F) uses; (G) annual quantity entering each environmental medium; (H) environmental monitoring data; (I) information on alternatives to the existing uses for the chemical substance or mixture and the alternatives' efficacy; (J) information on any

known adverse environmental or human health effects associated with the alternatives; (K) information on process changes, control technologies, operating practices and other pollution prevention techniques which can be used to reduce the emissions of the chemical substance or mixture, and their applicability and effectiveness; and (L) information on non-monetary costs and benefits as well as the quantifiable costs and benefits associated with the use of these alternatives and/or techniques. In addition, as with POPs, during the same time period, interested persons may also submit any arguments or information associated with the risks or benefits of the use of the chemical substance or mixture that support a determination either that the risk profile is or is not correct or that the chemical substance or mixture does or does not present an unreasonable risk of injury to health or the environment.

For both POPs and LRTAP, the proposed legislation would require that certain information provided under the sections be updated on an annual basis thereafter, until such time as the COP/Parties to the LRTAP POPs Protocol decide not to list the chemical substance or mixture on any Annex to the POPs Convention/LRTAP POPs Protocol or the Administrator, with the concurrence of the Secretary of State, determines that such reporting is no longer necessary. Based upon information received under these paragraphs and on any other relevant information available to the Administrator, the proposed legislation would require the Administrator, within a specified time period, to submit to the Secretary of State a report that contains, at a minimum, information on the production and uses in the United States of the chemical substance or mixture and an assessment of the benefits and risks associated with the production and uses in the United States of the chemical substance or mixture.

Both the LRTAP and POPs provisions also contain provisions that prohibit persons from using information in a subsequent rulemaking under TSCA section 6 that they could have, but did not, submit to Agency in relation to these information collection provisions.

Section 2(d): Relationship to other federal laws; international cooperation

This section, based on FIFRA section 17(d)(1), provides that “[t]he Administrator shall, in cooperation with the Department of State and any other appropriate Federal agency, participate and cooperate in any international efforts to develop improved research and regulations on chemical substances and mixtures, and should pursue opportunities to participate in technical cooperation and capacity building activities designed to support implementation of the POPs Convention, the LRTAP POPs Protocol, and the PIC Convention.”

Section 2(e): Exports

This section implements the PIC Convention and Article 3, paragraph 2(b) of the POPs Convention. Current TSCA section 12(a) exempts certain chemical substance or mixtures manufactured, processed or, distributed for export from most provisions of TSCA.

This proposed amendment would exempt from that general exemption any chemical substance or mixture for which manufacture, processing, distribution in commerce, use or disposal is

prohibited or restricted pursuant to new subsections 6(f) and 6(g)—the POPs and LRTAP provisions.

In addition, this section implements Articles 5, 11, 12, and 13 of the PIC Convention. It implements Article 5 of the PIC Convention by requiring the Administrator, with concurrence from the Secretary of State, to identify banned and severely restricted chemicals. This provision also requires the Administrator to notify the Secretariat and the public of such determinations including a summary of the information sent to the Secretariat.

It implements Article 11 of the PIC Convention by requiring persons engaged in the export of chemicals that are listed on Annex III of the PIC Convention to comply with import country decisions. Such decisions are notified to the USG through the Secretariat pursuant to Article 10.

In addition it implements Article 11 of the PIC Convention by requiring the Administrator, with the concurrence of the Secretary of State, to identify those chemicals that are added to Annex III of the PIC Convention and to identify the specific import country responses banning or restricting import of the chemical. This notification will serve as notice to exporters of the chemicals.

It implements Article 12 of the PIC Convention by requiring exporters to notify EPA of the intended export of a chemical substance or mixture that is banned or severely restricted in the US. This provision specifies that the notifications must include information required by Annex V of the PIC Convention. It then requires EPA to notify importing countries of the intended export of a chemical substance or mixture that is banned or severely restricted. This notification is to include the information provided in the exporter's notification to the Administrator.

This section implements Article 13 of the PIC Convention by requiring exporters to include labeling information on significant risks and/or hazards to human health or the environment accompanied by any relevant safety data sheets on the chemical.

This section also preserves the authority of the Administrator to exempt chemicals from the notification/export control requirements consistent with the PIC Convention.

Finally, this section harmonizes the provisions in this bill related to implementing the PIC Convention with the provisions in it related to implementing the POPs Convention to ensure that the U.S. remains in compliance with both Conventions.

Section 2(f): Prohibited acts

This section would make it unlawful for any person to fail or refuse to comply with the sections 12 or 13 of TSCA or any rule promulgated there under.